**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 868 of 1996**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE SHARAD D.DAVE**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**STATE OF GUAJRAT - Appellant(s)**
**Versus**
**DINESHBHAI KESHAVLAL PATEL (VENDOR) & 1 - Opponent(s)**

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**Appearance :**
Ms.Falguni Patel, APP for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1 - 2.
MR DK MODI for Opponent(s) : 1 - 2.
MR MD MODI for Opponent(s) : 1 - 2.

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**CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE**

**Date : 29/01/2007**

**CAV JUDGMENT**

1. This is an appeal filed by the appellant State under Section 378 of the Code of Criminal Procedure, 1973 challenging the judgment and order

dated 29.6.1996 passed by the learned Chief Judicial Magistrate, Ahmedabad (Rural), Mirzapur in Criminal Case No.2664 of 1993, whereby the Chief Judicial Magistrate, Ahmedabad (Rural) had acquitted the accused from the offence punishable under Section 2(1a)(a)(b)(c)(m), 7(1) and 16 (1a) (i) (ii) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as `the Act') under the provisions of Section 248(1) of Criminal Procedure Code.

2. The short facts giving rise to this appeal are such that :

The sample of groundnut oil was collected from the shop of the ownership of accused no.2 by name Dhanlaxmi Provision Stores which was given by accused no.1 Dineshbhai Keshavlal Patel who was present in the shop at that time on 20.5.93 at about 12.30 hours in the afternoon and on sending the same for analysis to the public analyst, it was found adulterated. Therefore, necessary sanction to prosecute the accused was obtained and the complaint was filed against the accused.

3. After receiving the complaint, summons were issued to the accused. Thereafter, the charge was framed against both the accused and as the accused pleaded not guilty and claimed to be tried, after recording the evidence and hearing the learned counsel for both the sides, learned Chief Judicial

Magistrate acquitted the accused from the offence punishable under under Section 16(1a)(i)(ii) of the Act under Section 248(1) of Criminal Procedure Code against which the present appeal is filed.

4. Heard Ms.Falguni Patel, learned APP for the appellant – State and Mr.D.K.Modi for the respondents.

5. The judgment is challenged on various grounds mentioned in para 4 of the memo of appeal. Ms.Falguni Patel, learned APP has taken me through the relevant part of the judgment and oral as well as documentary evidence led during the course of trial.

6. Mr.D.K.Modi for the respondents submitted that the case registered against accused no.2 is in the capacity of proprietor of the shop but as there was no evidence produced with regard to the same, the sanction granted against him was not valid sanction, which the learned trial Judge has rightly discussed and accepted.

7. He further submitted that there was a doubt regarding the identity of the sample received by the public analyst because the helper applied wood cover cork on the bottle in which the sample was collected whereas there was M.S.lead cover on the bottle when the same was received by the public analyst and, therefore, the learned trial Judge has rightly

discussed and accepted that there is a doubt regarding the identity of the sample.

8. He further submitted that the oil tin was purchased from one M/s Gayatri Enterprises and the accused herein was a retailer and he was bound to open the tin for selling the same on retail basis and that on the day of the deposition the said M/s Gayatri Enterprises was closed down and, therefore, the accused no.1 himself entered into the witness box to state that he purchased the said oil tin from M/s Gayatri Enterprises and also produced the bill. The said accused no.1 was not cross-examined by the prosecution and, therefore, his say remains uncontroverted and, thus, the learned trial Judge has rightly believed his say and acquitted the accused.

9. He further submitted that whenever a sample of groundnut oil is collected, the same should be stirred but there is no evidence to show that the same was done and, therefore, the learned trial Judge has rightly discussed and accepted the same. In support of his submission, he relied on the decision in the case of Criminal Appeal No.1883 of 2004 dated 4.7.2006, wherein this Court (Coram : S.R.Brahmbhatt,J) has observed in para 7 that “Shri Modi has also relied upon the decision of the Madhya Pradesh High Court in case of Dharma Chandra V/s Food Inspector and Another reported in 1985(1) PFA Cases P 199 in support of his submission that the oil was required to be stirred and made homogeneous before

the sample was taken therefrom. As it is nowhere brought on record by the prosecution to show that the entire quantity of oil was made homogenized before the sample was taken therefrom. The procedure was not complied with for taking the oil sample. Shri Modi has also relied upon the decision of the Bombay High Court in case of State of Maharashtra V/s Vinayak Mahadeora Waze and Another reported in 2005(2) FSC P 126 in support of his submission that the sample food article – oil ought to have been collected only after making the entire quantity homogenized. In other words, the sample food article is necessarily required to be representative of the entire quantity. The thrust is on the sample being representative of the entire quantity."

10. Further, he submitted that Rule 14 of the Act is mandatory before taking the samples that the vessel should be cleaned before taking the sample, which has not been done in this case. In support of his submission, he relied on the decision in Criminal Appeal No.404 of 1996 dated 12.6.2006, wherein this Court (Coram : S.R.Brahmbhatt,J) has observed in para 6 that "This appeal deserves to be disposed of only on the ground that the prosecution has failed in establishing beyond doubt the absolute compliance of provisions of Rule 14 of the Rules. The deposition of the complainant itself is sufficient to go to show that the complainant was not sure of the status of the bottles, wherein, the sample was collected. In

the deposition, he has admitted that he has no knowledge whether the bottle contained any `insect' and in the report of Public Analyst, it's not disclosed as to any `insect damage', whereas, in the report of the Central Food Laboratory, it is indicated that the sample was `insect damaged.” The deposition of the complainant further discloses that the bottles were not cleaned in his presence nor in the presence of vendor and panch and he had no knowledge as to who had cleaned the bottles. Mere statement that clean bottles were used would not be sufficient to show that bottles were cleaned.”

11. He also submitted that Rule 13(2) of the Act is mandatory which states that intimation along with the copy of the public analyst report is to be given to the accused by the Local Health Authority. Here in this case, the record shows that only notice is sent by the Local Health Authority but the yadi does not disclose that the copy of the public analyst report has been attached with the said notice. In support of his submission, he relied on the decision reported in 2002 FAJ 490, wherein the Hon'ble Supreme Court has observed in para 4 that “It is argued on behalf of the accused that mere despatch of the report is not enough and that the prosecution is further obliged to prove that the letter so despatched had reached the addressee, i.e., the accused. We agree with this submission, as we believe that forwarding a copy of the report is not only a ritual, but a statutory

requirement to be mandatorily observed in all the cases Despatch of such a report it is intended to inform the accused of his valuable right to get the other sample analysed from the central food laboratory.”

Further, he also relied on the decision in Criminal Appeal No.1088 of 1985 dated 4.4.1994, wherein this Court (Coram : S.D.Dave,J) has observed on page 3 that “As rightly submitted by the learned counsel for respondents accused, the complainant Food Inspector was required to say in his evidence that the bottles were cleaned or washed either by himself or in his presence and when he has not said so, no reliance could be placed upon the analysis report. The Court below has accepted this contention on the basis of the pronouncement of this Court in M.B.Risaldar V.Radheshyam Ramdhar Agarwal & Anr. 21(2) G.L.R. pg.136. This decision makes it abundantly clear that when this is not done the rule requirement would get frustrated and that reliance could not have been placed upon the analysis report which would show that the food article was adulterated. On the analysis of the factual and legal position it appears that no exception can be taken with the orders of acquittal pronounced by the Court below and the appeal would fail. Accordingly, the present appeal is dismissed and orders of acquittal under challenge are upheld and confirmed.”

He also relied on the decision reported in

2005(1)FAC 87, wherein this Court (Coram : A.K.Trivedi,J) has observed in paras 4 to 6 that :

“4. On having careful scrutiny of the impugned judgment and order, statutory provisions contained in Rule 14 of the Rules and the evidence of the complainant at Exhibit 59, it is seen that the complainant himself has admitted that he has not cleaned and dried the bottle before taking sample and putting the same in the bottle. Therefore, according to me, since the complainant has not complied with the statutory provisions of Rule 14 of the Rules, there is clear violation of the Rule which is mandatory in nature. In aforesaid view of the matter, I am of the opinion that the learned Magistrate has not committed any error or illegality in acquitting both the respondents/accused of the offence with which they were charged.

5. It may be noted that this is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly, when the evidence has not inspired confidence of the learned Magistrate. As this Court is in general agreement with the view expressed by the learned Magistrate, it is not necessary for this Court either to reiterate the evidence of the prosecution witnesses or to

restate reasons given by the learned Magistrate for acquittal and in our view, expression of general agreement with the view taken by the learned Magistrate would be sufficient in the facts of the present case for not interfering with the judgment of the learned Magistrate and this is so, in view of the decisions rendered by the Hon'ble Supreme Court in the case of Girja Nandini Devi and others Vs. Bijendra Narain Chaudhary, AIR 1967 SC 1124 and State of Karnataka Vs.Hema Reddy and another, AIR 1981 SC 1417.

6. On overall appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting both the respondents/accused. Suffice it to say that the learned Magistrate has given cogent and convincing reasons for acquitting both the respondents/accused and the learned A.P.P., has failed to dislodge the reasons given by the learned Magistrate and convince this Court to take a view contrary to the one taken by the learned Magistrate. Therefore, there is no merit in the acquittal appeal, and the appeal deserves to be dismissed at its inception.”

12. Learned advocate Mr.Modi for the respondents has cited various decisions in support of his submissions.

13. All the aforesaid points were raised by the

learned advocate for the accused before the learned trial Judge and the learned trial Judge has discussed all the points mentioned hereinabove on behalf of the accused and the authorities cited on behalf of the accused and came to the conclusion to acquit all the accused.

14. In view of the above, I do not find any perversity or illegality in the findings. It is now settled that when the appellate forum is in agreement with the reasons assigned by the lower court, then it is not necessary to rewrite those reasons. There is no scope of reappreciation of the evidence unless the Appellate Court finds perversity in the finding as well as gross error in appreciation of the evidence. I am of the opinion that this cannot be said to be rare case where the acquittal is required to be converted into that of conviction.

15. In view of the foregoing discussion, the following order is passed.

16. The appeal of the State is dismissed. The bail bond, if any, shall stand discharged.

(Sharad D.Dave,J)

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